ported for the purpose of distribution, it is immaterial whether the intended distribution takes place here or abroad. We are not, in this case, concerned with the act of distribution but with the act of transporting for the purpose of distribution. The gravamen of the charge in this case is not the act of distributing the drugs but the act of transporting them for the purpose of distribution. Adopting the words of Lord Diplock, if the purpose for which the drugs are being moved is to transfer possession from the mover to some other person known or in contemplation at the intended destination the mover is guilty of the offence of trafficking in drugs, irrespective of whether the purpose is achieved or not and – we would add – irrespective of whether the intended destination is here or abroad. Logically, it must follow that such a mover commits the offence immediately after he has begun his journey of moving the drugs, irrespective whether he reaches his destination or not. Again, adopting the words of Lord Diplock, it is the act of transporting drugs for the purpose of distribution which is one of the evils against which section 5, with its draconian penalties, is directed.

The defence therefore fails. We find the accused guilty of the offence for which he is charged. We convict him accordingly.

Convicted accordingly.

Solicitors: *Leong & Gay.*

BRUNEI REPORT

HAJI HASSAN BIN MUNAP v. PETRODRIL (B) SDN. BHD.

[O.C.J. (O'Connor J.) April 14 to 16, 18 & 20, 1987]

[Bandar Seri Begawan – Suit No. 179 of 1986]

Tort – Negligence – Fatal accident – Liability – Quantum of damages.

This case arose out of an accident that occurred on July 30, 1985 which resulted in the death of Ramli bin Hassan. The action was brought by the administrator of his estate for the benefit of the dependants of the deceased under the Fatal Accident Acts 1846 to 1908 and for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) Act 1934.

At the time of the accident, the deceased was a crewman on the supply ship "Putra Belait 2" which was moored in the open sea, alongside the barge "Tiga Kali" which in turn was moored to an off-shore rig. Various cargoes were being lifted by a crane on the barge from the supply ship onto the barge when a load of fire steel pipes, each about 30 feet long, fell from the crane and struck the deceased resulting in his death. The defendants, Petrodril (B) Sendirian Berhad, were the owners and operators of the barge "Tiga Kali" and the third party Sharikat Kejuruteraan Bumiputra Belait Sendirian Berhad were the owners and operators of the supply ship "Putra Belait 2", and were also the employers of the deceased.

The action was based on negligence against the defendants and the third party.

Held: (1) the defendants were negligent in the present case;

(2) the deceased was also negligent;

(3) the defendants were 85% liable and the deceased was 15% liable;

(4) as between the defendants and third party, the defendants were 75% liable and the third party 25% liable;

(5) damages were awarded as follows:

Pre-trial loss of earnings	$ 8,500.00
Earnings for lost years	$134,000.00
Loss of expectation of life	$ 6,000.00
Funeral expenses	$ 5,000.00
	$153,000.00

Since the deceased was 15% liable, the figure was reduced to $130,500.00 (a round figure). The third party's liability to the defendant was 25% of the judgment sum.

[*Editorial Note*: The defendants were ordered to pay the plaintiff's costs and the third party was ordered to pay the costs of the third party proceedings.]

CIVIL SUIT.

Andrew Ong for the plaintiff.

David Clidero for the defendants.

David Teo (*H.L. Ho* with him) for the third party.

Cur. Adv. Vult.

O'Connor J. : This case arises out of an accident that occurred on July 30, 1985, resulting in the death of Ramli bin Hassan. The action is brought by the administrator of his estate for the benefit of the dependants of the deceased under the Fatal Accident Acts 1846 to 1908, and for the benefit of the deceased's estate under the Law Reform (Miscellaneous Provisions) Act 1934.

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Were the defendants negligent?

Primarily the negligence for which it is sought to hold the defendants responsible is that they failed in their duty to exercise reasonable care to ensure that the crane, and in particular the hook of the crane, was in a safe condition and fit to lift and support the load. More precisely, the evidence has focused on whether the defendant was negligent in permitting a year and some twenty four days to pass, prior to the accident, without having the hook disassembled and inspected for corrosion.

The cargo to be lifted from the supply ship was placed in a sling, by the crew of the supply ship, and then on a signal from the crew, the crane driver operated the crane to lift the cargo. The sling was attached to a hook, the stem of which was threaded and onto which a bolt was screwed, thus attaching the hook to the wire of the crane. This thread carried not only the weight of the hook, but the weight of the total load which was attached to the hook. It is undisputed that corrosion of the screw threads of the nut and the hook stem caused excessive clearance between the threads of the hook stem and the threads of the nut. The threaded hook stem was, as a result, able to slide out of the nut, thereupon the hook, sling, and its load of pipes fell from a height of about 30 feet and hit the deceased. That was the immediate cause of the accident.

The corrosion which ate into the threads was of course caused by the effects of moisture and oxygen on steel. This took place over a period of time, and it is recognized by the defendants that there should have been regular inspections of equipment to ensure that corrosion was not taking place to a degree likely to affect safety. As regards this piece of equipment, it is also recognized that in order to properly inspect such equipment for that purpose, it was necessary to dismantle it, that is, to remove the bolt from the nut. An inspection without dismantling would not reveal whether the threads were being consumed by corrosion. The real issue on this aspect of the case is how often such an inspection should take place. The defendant says an annual inspection is, in all the circumstances, appropriate and is all that can reasonably be expected. The plaintiff on the other hand says an annual inspection is inadequate, as between annual inspections corrosion could commence and proceed to a stage that posed a safety risk. This case clearly shows that the plaintiff is correct on this matter; however, the case is not to be decided upon the risks which, the case itself shows, may arise. The standard of care demanded from the defendants is what was reasonable in the light of what was known, or should have been known to the defendants at the time of the accident. A relevant factor is the standard set by reputable bodies in this field, and the practice of the trade.

Lloyds of London in their "Code for Lifting Appliances in a Marine Environment" which has been effective since December 1981 recommends that hooks, such as the one in this case, should have a thorough survey every six months. The Code specifically provides that there should be no deferment of such survey in respect of hooks. It is to be noted that this standard is specifically for a marine environment. On behalf of the defendants, it is said that Lloyds' standard is too high, that it is out of line with other recommendations, and that it would unreasonably interfere, in time and expense, with the defendants' operations. Of course, time and expense involved is a matter to which practical consideration must be given

when deciding what is reasonable. Nonetheless, on the evidence before me, I do not find that contention attractive in the circumstances.

The barge "Tiga Kali" did not apply the Lloyds Code, as that barge is an American Bureau of Shipping classification.

Brunei Shell Petroleum, in its safety manual, recommends inspections at least annually. I consider the use of the words "at least" strike a note of caution that the period between extensions should not exceed a year, and preferably should be shorter. Mr. Harbottle, the defendants' expert, said that he considered leeway of a month, either way, should be allowed in respect of an annual survey. In my opinion, the Shell guideline does not envisage any extension of the period beyond one year. It is to be noted that the Shell guidelines are directed towards onshore operations.

Mr. Harbottle's employers, a firm of surveyors, has produced, since the accident, a document on survey procedure in respect of lifting equipment. In it they recommend that there be full inspection of hook assembly every two years. This appears to me to be very surprising. Mr. Harbottle at first said he agreed with this recommendation, but later said he thought inspection should be annually.

The Code for the Construction and Equipment of Mobile Off-shore Drilling Units, issued by the International Maritime Organization, recommends that cranes should be examined at intervals not exceeding 12 months. That again suggests that 12 months should be the maximum period between examinations.

In the light of the above, I do not consider it would have been unreasonable to only have annual inspections. However, I take the view that to permit the period between inspections to run beyond a year displayed a lack of the due prudence and reasonable care that was required. That this is so is but emphasized by a consideration of the evidence of the experts on corrosion.

The plaintiff's expert, Dr. Ho Kong Nam, has studied corrosion and obtained his Ph.D. with a thesis on the subject. He points out that due to the presence of salt, the corrosion rate off-shore in a marine environment is higher than onshore. I don't think it takes an expert to tell us that. He also tells us that a hook being used closer to the sea surface would suffer significantly higher corrosion than on being used higher up, say at a height of 30 feet. That would be due to spray *etc.* That seems an eminently sensible observation. That fact, if not known to the defendants, ought to have been. The hook in question had been used continually for a period of over 12 months prior to the accident at a level which must have been quite close to the sea level, certainly being frequently down well below 30 feet above sea level. Furthermore, Dr. Ho tells us that corrosion proceeds at an accelerating rate, getting a grip more easily in crevices such as in the thread of a screw. He said, rather tentatively perhaps, that if the screw threads were badly corroded, he would expect to see signs of corrosion twelve months previously if the bolt and nut had been disassembled.

Mr. Harbottle, the defendants' expert, has gained his expertise, to some extent, more in the field, as it were. He says corrosion would not be observed a year before the accident. He says that from tests he has done over the past year, he is of the opinion that the hook in question could have progressed from a state of no corrosion to its state at the time of the accident in less than 12 months. One factor that he says could contribute to that is manganese sulphide inclusions in the steel.

Prior to the accident, which was on July 30, 1985, the last suitable inspection of the threads of the bolt of the hook and of the nut had been on July 7, 1984.

I find that a reasonable crane owner or operator would not have allowed, at most, more than twelve months to pass without a further inspection of this hook which was being used in a marine environment and quite close to the sea surface. If there had been such further inspection on or before July 7, 1985, the dangerous condition of the hook would have been realized, and the accident would not have occurred. I find the defendant to have been negligent.

Another ground of negligence alleged against the defendant was in respect of the manner of operation of the crane. I find there is no substance in that allegation. I find that the crane driver only lifted a load when he was given an authorized signal to do so, and that he thereafter properly kept his eyes on the load, and that he had no prior indication that the load was about to fall, nor had he the opportunity to do anything helpful once it commenced to fall. Furthermore, I find no substance in the suggestion that the deceased was not given an indication as to which direction the load would be swung after it was lifted.

Was the deceased negligent?

The primary and immediate cause of the accident was the hook slipping out of the bolt and thereby causing the load to fall. The other cause was that the deceased was standing where the load landed.

The deceased was one of four persons whose job it was to fix the load upon the sling. That having been done, the deceased would give a "lift away" signal to the crane driver and the load would be lifted to a height of five to seven feet, at which height the load would be checked to see it was clear, secure, not swinging *etc.* Then it would be lifted to a height of about 30 feet, and swung to the barge for unloading. It did not always swing in a perfect arc of a circle; it would only do so if the load was to be let down the same distance from the crane as it had been lifted from the crane. In lifting the loads of pipes that morning, the fatal load not being the first such load, the path traced by the load would, as it progressed, be getting further away from the crane. That was because the loads were to be let down on the barge at a greater distance from the crane than they had been lifted from the crane.

There has been conflicting evidence as to whether the deceased would have been aware of the direction the fatal load was to be swung.

I am satisfied he was aware of that, not only from the path taken by the previous loads of pipes that morning, but also from the signal given by the crane driver.

Once the final lift commenced, the four crew who had done the loading should have got out from beneath the path that the load was going to take. I find that the defendant had ample opportunity to do so. He did not. He went to a place, which left him clear of the load as it was being hoisted, but left him under the path the load would take as it commenced to swing. His partner in the loading did likewise, but fortunately escaped with only a slight injury. Why they did this, went into this area of potential danger we do not know. Perhaps it was a case of familiarity breeding contempt of danger. Perhaps it was the easiest place to get to that was clear of the load as it was being lifted. Whatever the reason, they were going into a danger area. I find that in going there, the deceased was negligent for his own safety. I apportion responsibility at 85% on the defendant and 15% on the deceased.

Was the third party negligent?

The allegations of negligence made by the defendant against the third party are that they failed to operate a safe system of work on the supply ship so as to ensure that the deceased would be in a secure safe place when the load was aloft, and that they failed to have a supervisor present to ensure that.

The master of the barge, who had been the employee of the third party at the time, was called by the plaintiff. He was not an impressive witness. He says that he was the person giving the "lift away" signal to the crane operator, and that the crane operator lifted the fatal load without the signal having been given. I reject both parts of that evidence. I find the deceased was the person who had been giving the signals, and that the signal had been given in respect of the fatal load. The master was on board at the time of the accident, and ought to have been supervising his deck crew including the deceased but contrary to his evidence he was neither on deck, nor supervising the loading crew. He was on the bridge. He ought to have been supervising the loading crew, and if he had been doing so, and doing so properly, he would have directed the crew to go to a safe position when the final lift of each load commenced. He did neither. I find this amounted to negligence on the part of the third party, for the safety of the loading crew, and particularly for the safety of the deceased.

As between the defendant and the third party, I apportion responsibility 75% to the defendant and 25% to the third party.

Quantum

The deceased was aged 19 at the time of the accident. The parties suggest a multiplier ranging from 16 to 18. I adopt the lower figure, because I consider that, in the light of the immigration policy of the Brunei government, there is not a negligible chance that the deceased might, in the future, have found that he was unable to continue his career in Brunei, and might have had to return to Sarawak where the prospects of employment and remuneration are less.

Pre-trial loss

His basic salary was $620 plus a boarding and lodging allowance of $200. He also was entitled to a bonus of one month's salary each year.

That gives a total from his death to judgment of ($820 x 21) + $\frac{620 \times 21}{12}$ which I round up to $18,350. From this, I should deduct the amount spent on his own maintenance. He gave his father $300 a month and he saved about $50 a month. It appears that including board and lodging, his personal maintenance expenditure was about $470 a month which over the 21 months total about $9,900, which I deduct from the $18,350 leaving the pre-trial loss at $8,450 which I round up to $8,500; to that is to be added $5,000 agreed funeral expenses and $6,000 which I award for loss of expectation of life.

Lost years

I have selected a multiplier of 16, that is, 192 months, of which 21 months have gone towards the pre-trial calculation, leaving a figure of 171 as multiplier for the post-trial calculation.

He was a crewman at the time of his death, earning $620 a month, but in a couple of years could have expected to be earning $700. He was ambitious to become a captain, and I am satisfied he had the potential to do so. If he had done so, he could have been a captain in about seven to eight years and would have earned $2,000 a month till retirement age of 55.

The plaintiff suggests a figure of $1,500 for the post-trial period, and other counsel don't query that figure. I find it acceptable. I add to it $120 for bonus and $200 for board and lodging, getting a figure of $1,820. His expenditure on personal maintenance prior to death was about 57% of income, so I reduce the figure of $1,820 by 57% and get a figure of $783 which I multiply by 171 and get a figure of $133,893 which I round up to $134,000. I fix $6,000 for loss of expectation of life.

Funeral expenses are agreed at $5,000.

So the total is:

Pre-trial loss	–	$ 8,500
Lost years	–	$134,000
Loss of expectation of life	–	$ 6,000
Funeral expenses	–	$ 5,000
which gives an overall total of		$153,500

As I have found the deceased 15% responsible, I reduce that figure by 15% and get $139,475 which I round up to $130,500 for which I enter judgment for the plaintiff against the defendant.

There will be interest at 6% from death to today's date on the pre-trial amount of $11,475 being $\frac{(\$8,500 + \$5,000 \times 85)}{100}$, and interest at 2% on $5,100 (being $\frac{\$6,000 \times 85}{100}$) from date of death to today's date.

The third party's liability to the defendant is 25% of the judgment sum.

Order accordingly.

Solicitors: *Choo Chan & Wong; David Clidero & Co.; Ibrahim, Chee, Teo, Law & Co.*